

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JOHN D'AGOSTINO,

Plaintiff,

v.

**MASTERCARD INC.; MASTERCARD
INTERNATIONAL INCORPORATED
(d/b/a MASTERCARD WORLDWIDE);
ORBISCOM LTD.; ORBISCOM INC.;
CITIGROUP INC.; CITIBANK N.A., and
DISCOVER FINANCIAL SERVICES,**

Defendants.

Case No. 13-cv-00738-GMS

JURY TRIAL DEMANDED

STIPULATION AND STAY ORDER

Pursuant to the telephonic conference on September 24, 2013 (D.I. 44) and this Court's Minute Entry relating to the same, plaintiff John D'Agostino ("Plaintiff") and defendants MasterCard Inc., MasterCard International Incorporated, Orbiscom Ltd., Orbiscom Inc., Citigroup Inc., Citigroup N.A. and Discover Financial Services ("Defendants," collectively with the plaintiff, the "Parties") hereby submit this Stipulation, agreeing to a limited stay of this action, subject to approval of this Court.

The Parties hereby stipulate and agree that this action shall be stayed in light of Defendants' filing for Covered Business Method Review ("CBMR") of the asserted patents in the United States Patent and Trademark Office ("PTO"). Defendants' request for a stay in favor of CBMR would not be mandatory but, rather, would be subject to §18(b) of the Leahy-Smith America Invents Act. Section 18(b) requires the Court to conduct a four factor inquiry in determining whether to grant a stay:

(b) REQUEST FOR STAY.

(1) IN GENERAL. If a party seeks a stay of a civil action alleging infringement of a patent under Section 281 of title 35, United States Code, relating to a transitional proceeding for that patent, the court shall decide whether to enter a stay based on

(A) whether a stay, or the denial thereof, will simplify the issues in question and streamline the trial;

(B) whether discovery is complete and whether a trial date has been set;

(C) whether a stay, or the denial thereof, would unduly prejudice the nonmoving party or present a clear tactical advantage for the moving party; and

(D) whether a stay, or the denial thereof, will reduce the burden of litigation on the parties and on the court.

The instant action presents facts that would otherwise be considered in determining whether a stay is appropriate; however, Plaintiff is willing to stipulate to a limited stay based on the recently filed CBMR petitions with the condition that Plaintiff be entitled to move this Court for a lifting of the stay based on any change of circumstances in the PTO proceedings.

Accordingly, each Party shall retain the right to move this Court for a lifting of the stay in the event that Party deems it appropriate to do so and the non-moving party is entitled to oppose, at which time the Court will hold a status conference to set a schedule for briefing the issue as to whether the stay should be lifted and/or for future proceedings before the Court.

Dated: October 4, 2013

Respectfully submitted,

/s/ Daniel P. Murray

George Pazuniak (DE Bar 478)
Daniel P. Murray (DE Bar 5785)
O'KELLY ERNST & BIELLI, LLC
901 N. Market Street
Suite 1000
Wilmington, DE 19801
Phone: (302) 478-4230
Facsimile: (302) 295-2873
gp@del-iplaw.com
dmurray@oeblegal.com

Attorneys for Plaintiff, John D'Agostino

Respectfully submitted,

/s/ David E. Moore

Richard L. Horwitz (DE Bar 2246)
David E. Moore (DE Bar 3983)
Bindu A. Palapura (DE Bar 5370)
POTTER ANDERSON & CORROON LLP
1313 North Market Street
Hercules Plaza, 6th Floor
P.O. Box 951
Wilmington, DE 19801
Telephone: (302) 984-6000
rhorwitz@potteranderson.com
dmoore@potteranderson.com
bpalapura@potteranderson.com

Attorneys for Defendants

IT IS SO ORDERED this 8th day of Oct., 2013.



Chief Judge Gregory M. Sleet